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**Testimony
Before the Committee on Resources
United States House of Representatives**

**Legislative hearing on H.R.65, "*To provide for the recognition of the Lumbee
Tribe of North Carolina, and for other purposes.*"
April 18, 2007**

It is my privilege to make this statement as counsel for the Lumbee Tribe of North Carolina in support of H.R.65, a bill to extend full federal recognition to the Tribe. In the interest of full disclosure, I should inform the committee that I am also an enrolled member of the Tribe.

The hundred year legislative record on Lumbee recognition

In one form or another, Congress has deliberated on the status of the Lumbee Tribe of North Carolina for more than one hundred years. On numerous occasions during that time, Congress has itself or directed the Department of the Interior to investigate the Tribe's history and conditions. On all such occasions, the Tribe's Indian identity and strong community have been underscored.

Congress' first experience with the Tribe followed shortly upon the heels of formal recognition of the Tribe by the State of North Carolina in 1885. The 1885 state statute formally recognized the Tribe under the name Croatan Indians of Robeson County, authorized the Tribe to establish separate schools for its children, provided a pro rata share of county school funds for the Tribe's schools, and authorized the Tribe to control hiring for the schools and eligibility to attend the schools. See North Carolina General Assembly 1885, chap. 51. Two years later, tribal leaders sought and obtained state legislation establishing an Indian normal school, one dedicated to training Indian teachers for the Indian schools. See North Carolina General Assembly 1887, chap. 254. The Indian Normal School was badly underfunded, though, leading to the Tribe's first petition to Congress for recognition and assistance in 1888.

The 1888 petition to Congress was signed by fifty-four (54) tribal leaders, including all members of the Indian Normal School Board of Trustees. All the traditional Lumbee surnames are represented in the list of signatories -- Sampson, Chavis, Dial, Locklear, Oxendine, and others -- and descendants of these signatories are active today in the tribal government. The petition sought federal assistance for the then named Croatan Indians in general and funding for the Tribe's schools in particular. Congress referred the petition to the Department of the Interior, which investigated the Tribe's history and relations with the state. The Commissioner of Indian Affairs ultimately denied the request for funding, citing insufficient resources:

While I regret exceedingly that the provisions made by the State of North Carolina seem to be entirely inadequate, I find it quite impractical to render any assistance at this time. The Government is responsible for the education of something like 36,000 Indian children and has provision for less than half this number. So long as the immediate wards of the Government are so insufficiently provided for, I do not see how I can consistently render any assistance to the Croatans or any other civilized tribes.

Thus began the Department's long-standing opposition to federal recognition of the Lumbee Tribe, typically because of the cost of providing services.

After the failure of the 1888 petition to Congress, the Tribe sought recognition more directly through proposed federal bills. In 1899, the first bill was introduced in

Congress to appropriate funds to educate the Croatan Indian children. See H.R.4009, 56th Cong., 1st Sess. Similar bills were introduced in 1910 (See H.R.19036, 61st Cong., 2d Sess.) and 1911 (See S.3258, 62nd Cong., 1st Sess.) In 1913, the House of Representatives Committee on Indian Affairs held a hearing on S.3258 where the Senate sponsor of the bill reviewed the history of the Lumbees and concluded that the Lumbees, then called Croatans, had "maintained their race integrity and their tribal characteristics;" See Hearings before the Committee on Indian Affairs, House of Representatives on S.3258, Feb. 14, 1913. In response to the same bill, the Department of the Interior dispatched C.F. Pierce, Supervisor of Indian Schools, to conduct an investigation of the Croatan Indians. Pierce reviewed the Tribe's history, acknowledged their Indian ancestry and the strength of their community, but recommended against federal assistance for the Tribe:

It is the avowed policy of the Government to require the states having an Indian population to assume the burden & responsibility for their education as soon as possible. North Carolina, like the State of New York, has a well organized plan for the education of Indians within her borders, and I can see no justification for any interference or aid, on the part of the Government in either case. Should an appropriation be made for the Croatans, it would establish a precedent for the Catawbas of S.C., the Alabamas of Texas, the Tuscaroras of N.Y., as well as for other scattering tribes that are now cared for by the various states.

Those other tribes mentioned by Pierce have since been recognized by the United States.

In 1914, the Senate directed the Secretary of the Interior to investigate the condition and tribal rights of the Lumbee Indians and report to Congress thereon. See S.Res.410, 63rd Cong., 2d Sess. The Secretary assigned Special Indian Agent O.M. McPherson to conduct the investigation. According to the Secretary's letter to the President of the Senate transmitting the McPherson report, McPherson conducted "a careful investigation on the ground as well as extensive historical research." The report covered all aspects of the Tribe's history and condition, running 252 pages in length. See Indians of North Carolina, 63rd Cong., 3d Session, Doc. No. 677. McPherson's report again confirmed the tribal characteristics of the Lumbee Indians, but Congress took no action on the McPherson report.

In 1924, yet another bill was introduced in Congress to recognize the Lumbee Indians as Cherokee Indians of Robeson County. See H.R.8083, 68th Cong., 1st Sess. This bill failed and in 1932 a very nearly identical bill was introduced in the Senate. See S.4595, 72d Cong., 1st Sess. This bill failed as well.

The next federal bill was introduced in 1933 and was nearly identical to the prior two bills, except that it directed that the Croatan Indians "shall hereafter be designated Cheraw Indians and shall be recognized and enrolled as such..." H.R.5365, 73d Cong., 1st Sess. In his statement at the hearing on the bill, the Secretary of the Interior attached an opinion of John Swanton, a well-respected specialist on southeastern Indians with the Smithsonian Institution, which concluded that the previously named Croatan Indians actually descended from Cheraw and other related tribes. The

Secretary recommended that the United States recognize the Tribe as the Siouan Indians of Lumber River, but also that the Congress include termination language because of the expense of providing federal Indian services to the Indians.

Rep.No.1752, House of Representatives, 73d Cong., 2d Sess. The committee adopted the change proposed by the Secretary and reported the bill out favorably, but the bill was not enacted. The following year, the Senate Committee on Indian Affairs took the same action on the identical bill in the Senate, S.1632, but the Senate floor also did not act on the bill. See Rep.No.204, Senate, 73d Cong., 2d Sess.

These numerous federal bills to recognize the Tribe under various names have a common and clear legislative history -- that is, state statutes that modified the name by which the State of North Carolina recognized the Tribe. The 1899 federal bill would have recognized the Tribe as Croatan, just as the State had done in 1885. The 1911 federal bill would have recognized the Tribe as the Indians of Robeson County, just as the State had done in a 1911 amendment to state law. See North Carolina General Assembly 1911, chap. 215. The 1913 federal bill would have recognized the Tribe as Cherokee, just as the State had done in a 1913 amendment to state law. See North Carolina General Assembly 1913, chap. 123. Indeed, a committee report on the 1913 federal bill explicitly acknowledged that the federal bill was intended to extend federal recognition on the same terms as the amended state law. Rep.No.826, House of Representatives, 68th Cong., 1st Sess.; see also S.4595, 72d Cong., 1st Sess. [1932 bill which referred to the 1913 state statute as its antecedent.] Thus, Congress consistently followed the lead of North Carolina in its deliberations on the Tribe's status and did so in finally enacting a federal bill in 1956.¹

Legislative history of the 1956 Lumbee Act

In light of the mounting historical evidence compiled in Congress' deliberations on its recognition bills, including the McPherson Report and the Swanton opinion, the Indians of Robeson County grew dissatisfied with their designation under state law as Cherokee. Under pressure from the Tribe and after a referendum among tribal members, the State of North Carolina once again modified its recognition of the Tribe in 1953, renaming it Lumbee. North Carolina General Assembly 1953, chap. 874. Two years later, a bill identical to that one enacted by the state was introduced in Congress. See H.R.4656, 84th Cong., 2d Sess.

¹ In between the 1933 bill and the 1956 Lumbee Act, the Tribe attempted to obtain federal recognition through an earlier administrative process. Congress enacted the Indian Reorganization Act in 1934, which authorized half-blood Indians not then recognized to organize and adopt a tribal constitution, thereby becoming federally recognized. The Lumbee leadership wrote to the Commissioner of Indian Affairs, inquiring whether the act applied to the Lumbees. The inquiry was referred to Associate Solicitor Felix Cohen, the famous author of the foremost treatise on Indian law, the Handbook of Federal Indian Law. Cohen concluded that the Lumbees could organize under the act, if some members certified as one-half Indian blood or more and the Department approved a tribal constitution. The Tribe immediately asked the Department to make that inquiry and the Department dispatched Dr. Carl Seltzer, a physical anthropologist, for that purpose. Approximately 200 Lumbees agreed to submit to Dr. Seltzer's examination; interviews of these individuals were conducted as well as physical examinations. Dr. Seltzer certified 22 out of the 200 tribal members as one-half or more Indian blood, eligible to organize under the act. However, the Department refused to approve a tribal constitution submitted by those individuals, once again thwarting the Tribe's effort to become federally recognized.

The federal bill passed without amendment in the House of Representatives and was sent to the Senate. The Department of the Interior objected to the bill in the Senate, just as it had done in the House, but with more success. The Secretary noted that the United States had no treaty or other obligation to provide services to these Indians and said:

We are therefore unable to recommend that the Congress take any action which might ultimately result in the imposition of additional obligations on the Federal Government or in placing additional persons of Indian blood under the jurisdiction of this Department. The persons who constitute this group of Indians have been recognized and designated as Indians by the State legislature. If they are not completely satisfied with such recognition, they, as citizens of the State, may petition the legislature to amend or otherwise to change that recognition....If your committee should recommend the enactment of the bill, it should be amended to indicate clearly that it does not make these persons eligible for services provided through the Bureau of Indian Affairs to other Indians.

The Senate committee adopted the Secretary's recommendation and, when the bill was enacted into law, it contained classic termination language: "Nothing in this Act shall make such Indians eligible for any services performed by the United States for Indians because of their status as Indians, and none of the statutes of the United States which affect Indians because of their status as Indian shall be applicable to the Lumbee Indians." Pub.L.570, Act of June 7, 1956, 70 Stat. 254.

Clearly, the 1956 Lumbee Act was intended to achieve federal recognition for the Tribe. The House sponsor for the bill wrote to Senator Scott, seeking his support for the bill, and noted that the bill was copied from the recent state law by which the State of North Carolina recognized the Lumbee Tribe. Senator Scott, who agreed to sponsor the bill in the Senate, issued a press release describing the bill as one to give federal recognition to the Lumbee Indians of North Carolina on the same terms that the State of North Carolina had recognized the Tribe in 1953. Senator Scott testified before a Senate committee that, "The State of North Carolina has already by state law recognized the Lumbee Indians under that tribal name. Giving official recognition to the Lumbee Indians means a great deal to the 4,000 Indians involved."²

There are also excerpts from the legislative history of the 1956 act suggesting that Congress did not intend to make the Tribe eligible for federal services, even without the amendment proposed by the Secretary of the Interior. For example, in a colloquy on the House floor, the House sponsor Mr. Carlyle was asked whether the bill would commit the United States to furnishing tribal services. Mr. Carlyle responded in the negative. Congressman Ford then stated that , "[i]t simply provides for the change of

² The tribal population figure given by Senator Scott in his statement was repeated in the House and Senate reports on the bill. See H.Rep.No.1654, 84th Cong., 2d sess; S.Rep.No.84-2012, 84th Cong., 2d sess. The figure was erroneous. According to a correction to the figure published in contemporaneous newspaper accounts of the statement, the Senator intended to refer to 4,000 Indian families, not 4,000 individual Indians. The total tribal population in 1956 was set in this account at 27,726. This account is consistent with 1950 federal census data.

name,” and Mr. Carlyle agreed. 102 Cong. Rec. 2900 (May 21, 1955).³

The eligibility for federal services, though, is not determinative of whether federal recognition has been bestowed. While federal recognition and eligibility for federal services are often viewed as interchangeable, they are not under federal law. The Department of the Interior has itself made this clear in the context of Congress’ deliberations in 1977 on legislation to restore the previously recognized Siletz Tribe. In its comments on the bill, the Department recommended that the language in the bill restoring “federal recognition” be replaced with language restoring “the federal trust relationship.” The Department explained the reason for this proposed change as follows:

Section 3(a) states: “Federal recognition is hereby extended to the tribe.” This suggests that the Siletz Indians are not now federal recognized. This is not the case; they are recognized. The termination act simply dissolved the special relationship between the Siletz Indians and the Federal Government and terminated any federal services and supervision. See 25 U.S.C. §691. Federal recognition and federal services are often confused and erroneously used interchangeably. Because of the close connection between federal recognition and the provision of federal services, etc., the error is understandable, but nonetheless federal recognition and federal services are not synonymous and should not be used interchangeably. In lieu of the above quoted language, we would substitute the following: “The trust relationship between the Federal government and the Siletz Indians is hereby restored.”

See 1977 U.S. Code Cong. And Admin. News, p. 3700. The 1956 Lumbee Act should be similarly construed to recognize the Tribe, even though there was no clear intent to provide federal Indian services. In effect, Congress simultaneously recognized and terminated the Tribe.

Administrative and judicial interpretation of the 1956 Lumbee Act

Since 1956, federal agencies and courts have reached varying conclusions regarding the effect of the 1956 Lumbee Act. In 1970, the Joint Economic Committee of Congress described the Lumbee as having been officially recognized by the act, although not granted federal services. See “American Indians: Facts and Future,” Toward Economic Development for Native American Communities, p. 34 (GPO 1970). Also in 1970, the Legislative Reference Service of the Library of Congress described the 1956 Lumbee Act as legislative recognition of an Indian people. See Memorandum, April 10, 1970, on Extending Federal Jurisdiction and Services to Hill 57 Indians, LRS, Library of Congress. And in 1979, the Comptroller General ruled that the 1956 act left the Lumbees’ status unchanged, i.e., it neither recognized the Tribe nor terminated the Tribe’s eligibility for services it might otherwise receive. The one court to construe the statute concluded it was intended “to designate this group of Indians as ‘Lumbee

³ Because of the history of relations with the State, in which the recognized tribal name was changed several times over the years, the Tribe viewed the “giving of a name” as recognition. Even today, tribal members who inquire about the status of the pending bill will sometimes ask when Congress will give the Tribe its name.

Indians' and recognize them as a specific group...," but not to take away any rights conferred on individuals by previous legislation. Maynor v. Morton, 510 F.2d 1254, 1257-1258 (D.C. Cir. 1975) [holding that the so-called half-bloods certified under the Indian Reorganization act were eligible to receive Bureau of Indian Affairs' services].

The Congressional Research Service (CRS) thoroughly reviewed the history and various interpretations of the 1956 Lumbee Act in 1988. It did so in response to a request from the Senate Select Committee on Indian Affairs, which had under consideration at the time H.R. 1426, a bill to provide federal recognition to the Lumbee Tribe. The CRS concluded as follows:

The 1956 Lumbee legislation clearly did not establish entitlement of the Lumbee Indians for federal services. It also clearly named the group and denominated them as Indians. Without a court decision squarely confronting the issue of whether the 1956 statute confers federal recognition on the Lumbee, there is insufficient documentation to determine if the statute effects federal recognition of the Lumbees. It is, however, a step toward recognition and would be a factor that either the Department of the Interior or a court would have to weigh along with others to determine whether the Lumbees are entitled to federal recognition.

Memorandum dated September 28, 1988, reprinted in S.Rep.No.100-579, 100th Cong., 2d Sess.

Whatever its ambiguity otherwise, the 1956 Lumbee Act indisputably makes the Lumbee Tribe ineligible for the administrative acknowledgment process. See 25 C.F.R. Part 83. Under the acknowledgment regulations, the Secretary of the Interior cannot acknowledge tribes that are subject to legislation terminating or forbidding the federal relationship. Id., §83.3(e). In a formal opinion issued on October 23, 1989, the Solicitor for the Department of the Interior concluded that the 1956 Lumbee Act is such federal legislation and, as a result, the Department is precluded from considering any application of the Lumbee Tribe for federal acknowledgment.

Thus, the Tribe continued its efforts to obtain full federal recognition from Congress. Companion bills were introduced in the 100th Congress for this purpose, H.R.5042 and S.2672. Hearings were held on the bills, once again establishing the Lumbee's tribal existence, and the Senate bill was reported favorably out of committee. Neither bill was enacted, however. Companion bills were introduced in the 101th Congress to recognize the Tribe [H.R.2335 and S.901], but neither was enacted. Once again in the 102d Congress, companion bills were introduced [H.R.1426 and S.1036]. This time, the House of Representatives passed the bill [with 240 yeas, 167 nays, and 25 not voting], but the Senate failed to invoke cloture on debate [with 58 voting for and 39 voting against] and the bill failed. In the 103d Congress, H.R.334, a bill virtually identical to that passed in 1991, was introduced; the bill passed the House again but was never acted on in the Senate. Most recently, the 108th Congress considered similar bills, S.420 and H.R.334 and the 109th Congress considered S.660 and H.R.21.

Legislative precedent for the bill

Only one other tribe in the history of federal Indian affairs has been placed by Congress in precisely the same position as the Lumbee Tribe, that is, half in and half out of the federal relationship, by special legislation.⁴ In 1968, Congress enacted a special act regarding the Tiwas of Texas, 82 Stat. 93, one that was modeled on the 1956 Lumbee Act and left the Tiwas in the same legal limbo.

Like the Lumbee Tribe, the Tiwas of Texas had been long recognized by the state. In the 1968 Tiwa Act, Congress designated and recognized the Indians as Tiwas, expressly terminated any federal trust relationship, and precluded the delivery of federal Indian services -- just as it had done in the 1956 Lumbee Act. In fact, the Senate committee specifically noted in its report on the 1968 Tiwa Act that the bill was "modeled after the act of June 7, 1956 (70 Stat. 254), which relates to the Lumbee Indians of North Carolina." S.Rep.No.1070, 99th Cong., 2d Sess. According to the Department of the Interior, this 1968 Tiwa Act made the tribe ineligible for administrative acknowledgment, a decision that clearly presaged the Department's construction of the 1956 Lumbee Act in 1989. Because of this unique circumstance, the Department expressed no opposition to special legislation extending full recognition to the Tiwas of Texas. In 1987, Congress removed the Tiwas of Texas from the restrictions imposed upon them in the 1968 Tiwa Act. Congress enacted the Ysleta del Sur Pueblo Restoration Act, Pub.L. 100-89, Act of August 18, 1987, 101 Stat. 667, to restore the federal trust relationship with the Ysleta del Sur Pueblo of Texas, previously known as the Texas Tiwas. Just as the 1968 Tiwa Act created a special circumstance justifying special legislation for that tribe, so does the 1956 Lumbee Act for the Lumbee Tribe.

Further, just as it did for the Tiwas of Texas, the Congress should enact comprehensive legislation as proposed by the Lumbee Tribe, legislation that resolves all related issues -- status, service delivery area, base roll, jurisdiction, etc. The Congress should not enact another half measure, one that repeals the 1956 Lumbee act and requires administrative action on the Tribe under the acknowledgment regulations for numerous reasons.

First, as a matter of fundamental fairness, the Congress should deal with the Lumbee Tribe just as it has every other tribe in the same situation, that is, by enacting recognition legislation because the tribe is ineligible for the administrative process. Congress has *never* passed special legislation that would require administrative action on a tribe that is under present law ineligible for the administrative process. The Lumbee Tribe is the last tribe in the country left in that position. There is no legitimate

⁴ There is a third tribe that was subject to similar legislation -- the Pascua Yaquis of Arizona. In 1964, Congress passed a statute conveying federal land to the Pascua Yaqui Association, Inc., an Arizona corporation. See 78 Stat. 1195, Pub. L. 89-14. The final section of this statute, like the Lumbee and Tiwa acts, provided that the Yaqui Indians would not be eligible for federal Indian services and none of the federal Indian statutes would apply to them. Congress has since extended full federal recognition to the Pascua Yaqui. See 25 U.S.C. §1300f. The position of the Pascua Yaqui was somewhat different from that of the Lumbees and Tiwas, since the earlier federal statute involved a state corporation and arguably would not have recognized a tribe, even without the termination language. Also, the Pascua Yaqui recognition legislation was enacted in 1978, before the administrative acknowledgment process was in place. Nonetheless, the Department proposed that Congress repeal the 1964 Pascua Yaqui bill and require that the Yaquis go through the soon to be established administrative acknowledgment process. See S.Rep.No. 95-719, 95th Cong., 2d Sess. 7, reprinted in 1978 U.S. Code Cong & Admin. News 1761, 1766. Congress refused to do so and enacted the recognition legislation.

reason to depart now from Congress' legislative tradition in such circumstances, particularly since to do so would impose a tremendous burden on the Tribe - first, obtaining the passage of special legislation amending the 1956 Lumbee act, and second, subjecting the Tribe to the intrusive, time consuming, and expensive administrative acknowledgment process.

Second, there is no good purpose to be served by sending the Lumbee Tribe to the current administrative process. That process provides the Department an opportunity to examine a group's history and community to determine whether the group is, in fact, an Indian tribe. The Department of the Interior and the Congress have already made that inquiry with regard to the Lumbee Tribe on numerous occasions. In response to the Tribe's repeated requests to Congress and the Department for federal recognition, the Congress and the Department have compiled a voluminous record on the Tribe's history and community. Because that record plainly establishes the status of the Lumbee Indians as an Indian tribe, further study of the Tribe would be a considerable waste of time (indeterminate period before active consideration and between five and ten years time before final agency action) and substantial waste of tribal and federal resources (in the hundreds of thousands of dollars.)

Third, despite some suggestion to the contrary by other witnesses, there is simply no magic to the current administrative acknowledgment process. That process is not the source of all knowledge or wisdom regarding the status of Indian tribes. To the contrary, the overwhelming majority of tribes now recognized by the United States were recognized by Congress. According to a GAO report, there were 561 federally recognized Indian tribes as of November 2001. Of those, 530 were recognized by Congress and 31 were recognized by the Department of the Interior. Out of the 31 recognized by the Department of the Interior, 10 were recognized before the 1978 regulations were adopted, 14 were recognized after 1978 and under those regulations, and 7 were recognized after 1978 but without regard to the regulations. In short, there is no historical or other necessity for subjecting the Lumbee Tribe to the current administrative process.

Finally, given the hundred year history summarized above, the Lumbee Tribe has every reason to be skeptical of unbiased and even-handed treatment by the Department of the Interior. The Department has successfully blocked federal recognition of the Tribe for over one hundred years, both before Congress and administratively. It is simply not realistic to expect the Department now to do what it has never been able to do in the past - base its judgment about the Lumbee Tribe purely on the facts and not on fiscal or other considerations.

For more than one hundred years now, the Lumbee Tribe has been studied and "processed." The record produced by these studies, even those by the Department, consistently shows an independent Indian community descended from Cheraw and related Siouan speaking tribes that has existed from white contact until the present as a separate community with known and visible leaders. Under present law, the Lumbee Tribe can only be recognized by an act of Congress. Legislative precedent under these circumstances supports the enactment of H.R.65, comprehensive recognition legislation, not another half measure.

Major provisions of H.R.65

Congressman McIntyre's bill is appropriately structured as an amendment to the 1956 Lumbee Act, thus allowing Congress to complete the task it began in 1956. Specifically, the bill provides for:

- explicit federal acknowledgment of the Tribe, including the application to the Tribe of all laws of the United States of general applicability to Indians and Indian tribes;⁵
- the eligibility of the Tribe and its members for all programs, services, and benefits provided by the United States to Indian tribes and their members, such services to be provided in the Lumbees' traditional territory of Robeson, Cumberland, Hoke, and Scotland Counties, North Carolina;
- the determination of a service population, to be done by the Secretary of the Interior's verification that all enrolled members of the Tribe meet the Tribe's membership criteria; and
- the granting of civil and criminal jurisdiction to the State of North Carolina regarding the Lumbee Tribe, to insure consistent and continuous administration of justice, until and unless the State of North Carolina, the Tribe, and the United States, agree to transfer any or all of that authority to the United States.

These are provisions typically found in recognition legislation and reflect the federal policy of self-determination for Indian tribes. Most importantly, it finally accomplishes the goal long sought by the Lumbee people -- treatment like every other recognized tribe in the United States.

Conclusion

Congress and the Department of the Interior have over the last century repeatedly examined the Tribe's identity and history and have consistently found the Tribe to be an Indian community dating back to the time of first white contact. There is no need for further study of the Tribe's history. There is no need for another half measure by Congress. There is need for an act of Congress that comprehensively and once and for all addresses the status of the Lumbee Tribe and all related issues. On the Tribe's behalf, I urge the committee's favorable action on H.R.65.

⁵ One of the statutes generally applicable to Indian tribes is the Indian Gaming Regulatory Act, 25 U.S.C. §2701 et seq [IGRA.] This statute was enacted in 1988, exactly one hundred years after the Lumbee Tribe first sought federal recognition. Clearly, the Lumbee Tribe's quest is not motivated by gaming; neither has the Tribe expressed any current interest in gaming. However, the Tribe strongly believes that Congress should not pick and choose among statutes that apply to it and subject it, once again, to second class treatment as compared to other recognized Indian tribes. It should be noted, though, that Congressman McIntyre's bill imposes greater restrictions on the Tribe's ability to game under IGRA than on those tribes that are recognized through the administrative process. H.R.65 does not create an Indian reservation; as a result, even if the Lumbee membership authorized tribal leadership to negotiate a gaming compact with the State (the Lumbee tribal constitution explicitly requires a special tribal referendum to authorize such), land for such uses could only be taken into trust by the Secretary of the Interior with the consent of the Governor of North Carolina. In contrast, tribes acknowledged through the administrative process can by-pass gubernatorial consent through the designation of an initial reservation by the Secretary of the Interior. 25 U.S.C. §2719(b)(1)(B)(ii).